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Paper No. 8

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APR 09 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of  
Le et al.  
Application No. 09/954,618  
Filed: September 11, 2001  
Attorney Docket No. P-005-005

This is a decision on the petition under 37 CFR 1.137(b), filed March 25, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed October 16, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 17, 2001. A Notice of Abandonment was mailed on November 6, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,<sup>1</sup>
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

The instant petition lacks item (2). Petitioner only submitted \$650.00 towards payment of the petition fee. Effective October 1, 2003, the small entity petition fee is \$665.00. Accordingly, petitioner must submit an additional \$15.00.

The Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address submitted with the instant petition on March 25, 2004, is hereby not accepted. Although petitioner properly submitted a Revocation from each individual inventor, only the one submitted by Kiem Tinh Le was signed. The remaining inventors need to submit a signed copy of the Revocation of Power of Attorney in order for it to be accepted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
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Telephone inquiries should be directed to the undersigned at (703) 306-0482.



Liana Chase  
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for Patent Examination Policy

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<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).